

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Southern District Of Ohio
Name of Movant Tracy Bias	Prisoner No. 70248-061	Case No. 1:12-cr-43
Place of Confinement FCI Elkton Federal correctional Institution P. O. Box 10 Lisbon, Ohio 44432		
<div style="display: flex; justify-content: space-between;"> UNITED STATES OF AMERICA v. <u>Tracy Bias</u> </div> <div style="text-align: right; margin-top: 5px;">(name under which convicted)</div>		
MOTION		
1. Name and location of court which entered the judgment of conviction under attack _____ <u>United States District Court Southern District of Ohio Western Division</u>		
2. Date of judgment of conviction <u>May 21, 2014</u>		
3 Length of sentence <u>168 months plus 10 years supervised release</u>		
4. Nature of offense involved (all counts) _____ <u>Myself and 7 others were indicted with 12 counts, among those being conspiracy to distribute a controlled substance. I</u> <u>was also charged with conspiracy to obtain drugs by deception, with multiple counts of maintaining a drug premises,</u> <u>and with continuing a criminal enterprise</u>		
5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: <u>I plead guilty to Count One of the Superseding Indictment, and the forfeiture allegations. The guilty plea was part of</u> <u>a written plea agreement with the United States. The plea agreement contemplated that I would provide cooperation</u> <u>to the government regarding its prosecution of others, specifically Mr. Hillmam. Should I cooperate in this matter as</u> <u>required and provide honest and complete testimony, the United States agrees to see a term of incarceration not</u> <u>exceeding ten (10) years</u>		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input checked="" type="checkbox"/>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

 FILED
 RICHARD M. NAGEL
 CLERK OF COURT
 2017 FEB 15 AM 11:44
 U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF OHIO
 WEST DIV CINCINNATI

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9. If you did appeal, answer the following:

- (a) Name of court United States District Court Southern District of Ohio
- (b) Result Dismissed appeal for lack of jurisdiction
- (c) Date of result June 13, 2014

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court United States Court Of Appeals For The Sixth Circuit
- (2) Nature of proceeding Statement regarding subject-matter jurisdiction
- (3) Grounds raised The district court erred when it failed to require the government to abide by the terms of the plea agreement regarding sentencing recommendations and remedies the government could pursue if it believed I breached the plea agreement. As a result, the district court sentenced me in violation of due process of law.
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒
- (5) Result dismissed
- (6) Date of result November 25, 2015

(b) As to any second petition, application or motion give the same information:

- (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- _____
- _____
- _____
- _____

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

(4)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: I was sentenced in violation of due process of law

I was sentenced in violation of due process of law

Supporting FACTS (state *briefly* without citing cases or law) _____

The government broke the plea agreement (contract). They failed to file the proper motion. However, they came up with a sentencing memorandum a few days before sentencing. This was presented five days before sentencing. Tim Oakley the prosecutor offered to let me withdraw my plea only after I appealed. Tim offering to me was knowing that was what they was supposed to and the judge said this this sentencing Memorandum will work and sentenced me to 168 months. There was nothing in my Plea Agreement that allowed them to do this. I feel that the Government didn't want to occur the cost of a trial. All of my co-defendants had all already been sentenced and I feel they believe that their informants was not credible.

B. Ground two: Ineffective counsel

Supporting FACTS (state *briefly* without citing cases or law): _____

My attorney's never once discussed a defense strategy. All they were willing to discuss was a plea bargain with the United States and the prosecutor. I took this plea bargain with the government knowing exactly every answer I had to their questions concerning my attorney Steve Hillman. His trial resulted in a miss trial and Mr. Hillman pleading guilty to tax evasion. I received more time than anyone else involved in this case combined. During the whole process I was appointed several different attorneys and feel that none of them were properly prepared to even take my case to trial. My attorneys only wanted to discuss a plea bargain and no defense.

C. Ground three: Miss Conduct of the United States Government

Supporting FACTS (state *briefly* without citing cases or law): _____

The Plea Agreement was only reached after the Statement Of Facts was amended to omit any allegations that I owned Trinity Health Care or that I sponsored patients to this clinic or any other clinic involved. The Government accepted the amended Statement of Facts. The government knew these facts the whole time for almost a year since it accepted my Plea. They knew what my answers were already going to be when I testified in the Hillman trial. Instead they let me waive my Constitutional Rights.

D. Ground four: Malicious Prosecution From Judge Michael R. Barrett

Supporting FACTS (state *briefly* without citing cases or law):

The Government, Tim Oakley asked the court if it would want the United States to file a motion to ~~withdraw the plea, go to trial with statements as admitted as per the entire Plea Agreement, that it was in~~ their contract. This was one of their two options if they did not believe me. The courts finds it not necessary. ~~It was necessary it was part of the governments contract. Tim Oakley now that is what they were~~ supposed to do, that is why he ask the State if they wanted them to do so. ~~Judge Barrett also claims to have taken in consideration that Bart only received a 5 year sentence in Bop~~ with years probation. I only have one other misdemeanor charge. Judge Barrett admits to not being ~~impressed by either of us. Not only did the judge sentence me to 14 years, and finds me responsible for~~ profits obtained in the amount of \$6,348,000.00 There was 7 of us charged in my indictment, Bart received ~~an indictment almost a year previous. Bart was a witness in many cases to receive such time. I also~~ cooperated with them and ended up with more time than any others named in these 2 indictments. This unjust and unconstitutional to allow this to happen in the Federal Courts.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

B C and D. I had ineffective counsel through this whole process. I am now doing this on my own with help from a family member of mine that has been educated in criminal justice. I have also had time to review my case and realize that several of my Constitutional Rights have been violated by the United States Government and Judge Michael R. Barrett.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Karen Savir, ESQ. Federal Public Defender's Office

Chiquita Center 250 East Fifth Street Cincinnati Ohio

(b) At arraignment and plea Theodore J. Froncek, Jr, ESQ Olde Sycamore Square

1208 Sycamore Street Cincinnati, Ohio

(c) At trial No trial

(d) At sentencing John T. Keller ESQ. 2345 Kemper Lane P.O. Box 6129 Cincinnati, Ohio

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(e) On appeal Timothy J. Bicknell 3628 Jefferson Avenue, 1st floor Cincinnati, Ohio 45220

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

02/11/2017
(date)

Tracy R. Bias
Signature of Movant

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION AT CINCINNATI

UNITED STATES OF AMERICA

Vs.

Case No. 1:12-CR-43

TRACY BIAS

BIAS'S MEMORANDUM OF FACTS IN SUPPORT OF PETITION FILED

UNDER 28 U.S.C. 2255

Comes now Tracy Ray Bias , and files this my Memorandum of Law in Support of Petition Filed Under 28 U.S.C 2255 and is based upon the deprivation of my Sixth Amendment right to effective assistance of counsel, and upon violations of the Due Process Clause of the Fifth Amendment that resulted from the deprivation of effective assistance. I am currently incarcerated at FCI Elkton Federal correctional Institution P.O. Box 10 Lisbon, Ohio, serving a sentence of 168 months. I was sentenced to 168 months despite my extensive cooperation with, and substantial assistance to, the U.S. government. I was sentenced to 168 months despite a plea agreement that provided that the U.S. government would not seek more than 120 months.

I was sentenced to 168 months because my attorney's failed to protect my most basic constitutional rights at sentencing. Those rights included the constitutional right not to be sentenced on the basis of false or incorrect government allegations. Those rights also included the constitutional right to have the U.S. government honor the terms of the plea agreement. In sum, I was deprived of effective assistance of counsel in fundamental and serious ways. My sentence of 168 months in prison was a result of the ineffective assistance and miss conduct of the United States.

The relief that I am seeking is simple, and is mandated by law: that my sentence is vacated, and that I am resentenced on a full and accurate record, free of misstatement, and in a manner wholly compliant with the government's obligation under the plea agreement.

ISSUES AND SUPPORTING ARGUMENT TOGETHER WITH POINTS AND AUTHORITIES OF LAW

A. Plea Agreement and Violation of Due Process of Law

The District court erred when it failed to require the government to abide by the terms of the plea agreement regarding sentencing recommendation and remedies the government could pursue if it believed that I breached the plea agreement. As a result, the district court sentenced me in violation of due process of law.

B. Ineffective counsel

I plead guilty to count 1 of the Superseding indictment and the forfeiture allegations. The guilty plea was part of a written plea agreement with the United States. The Plea Agreement contemplated that if I would provide cooperation to the government regarding its prosecution of others, specifically Mr. Hillman. Should I cooperate in this matter as required and provide honest and complete testimony, the United States agrees to seek a term of incarceration not exceeding (10) years. I also understood that if I was to violate and fail to provide complete cooperation as determined by the United States. I understood and agreed that the United States can move that the plea be withdrawn and then I would face the charges set within the entire indictment. I was sentenced to 168 months because my attorney's failed to protect my most basic constitutional rights at sentencing. Those rights included the constitutional right not to be sentenced on the basis of false or incorrect government allegations. Those rights also included the constitutional right to have the U.S. government honor the terms of the plea agreement. In sum, I was deprived of effective assistance of counsel in fundamental and serious ways. My sentence of 168 months in prison was a result of the ineffective assistance and miss conduct of the United States. My attorneys never once discussed a defense strategy. All they wanted to discuss was a Plea Bargain with the United States.

C. Miss Conduct of the United States Government

The plea was only reached after the Statement of Facts was amended to omit any allegations that I owned Trinity Health Care or that I sponsored patients to this clinic or any other clinic involved. After that had been amended and after that Amended Statement of Facts was accepted by the government, the government agreed that it would seek no more

than 10 years if I cooperated, but also agreed that if I did not cooperate, that it would move to withdraw my plea See: paragraph 5: plea agreement.

The government new these facts the whole time for almost a year since it accepted my plea, and the government could have said, knowing that I would deny these things, the government could have called me a liar, we don't believe you, and we're not going to accept your plea. The government could have filed a motion to withdraw as required by the Plea Agreement, but they did not.

Instead they let me waive my constitutional rights. This is misconduct from the United States government. It is in position that, under the Plea Agreement, the government was required to move to withdraw my plea in the event that I did not cooperate or request no more than 10 years in the event I did cooperate. One way or another, the government was required to act. It did not file a Motion to withdraw my plea, instead took my testimony and put me on the stand in open court. The Government never notified me that it considered me to have breached the plea agreement. The Government accepted all of the benefits conferred on it by the plea agreement and then refused to discharge its obligation to seek a term of incarceration not exceeding (10) years. *Id.* Accordingly, I have been denied the "benefit of my bargain" in violation of due process of law.

D. Malicious Prosecution from Judge MICHAEL R. BARRETT

Tim Oakley asked the court if it would want the United States to file a motion to withdraw the plea, go to trial with statements admitted as per the entire Plea Agreement, that it was their contract. See: document # 367, the court finds it not necessary. See United States v. Harrington (7th Cir.2016) No. 15-3486

As in the Harrington case there is no indication that I lied at Hillmans trial or had any incentive to see Hillman acquitted-on the contrary, had Hillman been convicted this would have enhanced my value to the prosecution and thereby increased the likelihood that the government would go all out, and succeed, in persuading the district judge to sentence me to no more than 10 years.

Judge Barrett allows the United States to construe up a Sentencing Memorandum 5 days prior. I was never notified by any motion or any other document that the Government did not believe me and their recommendations were changing. Everything about Trinity Health Care had been omitted from the Statement of Facts. Not only that Judge Barrett new but the Government new that I was not going to admit to this at Steve Hillmans trial.

Judge Barrett claims to have taken into consideration that Bart Journey only received 5 years in BOP with him having a way worse background and criminal history. Bart Journey has several other previous felony charges. See United States v. Bart Journey. I only have one other misdemeanor charge other than the charge that I have been sentenced for in this court. Not only did the judge sentence me to 14 years, the courts find me responsible for all profits obtained from the businesses in the amount of \$6,348,000.00. I was not the only one involved in this case. Myself and all others involved in my case was sentenced by the same

judge Michael R. Barrett. I received the largest sentence of all with all other defendants receiving 5 years or less. **See:** Criminal Docket for Case # 1:12-cr-00043-MRB all defendants.

The relief that I am seeking is simple, and is mandated by law: that my sentence is remanded or vacated, and that I am resentenced on a full and accurate record, free of misstatement, and in a manner wholly compliant with the government's obligation under the plea agreement.